IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 144 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

M/S.ARUNA MILLS

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for the opinion of this Court in respect of the assessment year 1991-92 :

"Whether, on the facts and in the circumstances of the case the Appellate Tribunal has been right in law in confirming the view taken by the Commissioner of Income-tax (Appeals) to delete the disallowance of central excise duty of Rs.8,04,734/- ?"

2 We have heard Mr.B.B.Nayak for the revenue. Though served none appears for the respondent-assessee.

3 Our attention is invited to the decision dated 15/2/2001 in Income Tax Reference No. 121 of 1989 between the same parties. In the aforesaid decision this Court held that, when the assessee is served with only show cause notice under sub-rule (1) of rule 10 (as it then stood) of the Central Excise Rules, the liability to pay excise duty does not accrue till the passing of the adjudication order or order in original under sub-rule (2) of Rule 10 (as it then stood) which may be treated as or followed by a 'demand notice'.

4 Mr.Nayak also invited our attention to the show cause notice at Annexure "C" (Page 12). On bare perusal of the said notice it clearly indicates that the excise department had merely issued a show cause notice and there was no adjudication. Hence, the liability to pay excise duty did not accrue upon mere issuance of the show cause notice in the accounting year relevant to assessment year 1981-82.

5 Following the aforesaid decision, our answer is in the negative i.e. in favour of the revenue and against the assessee.

6 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt